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Summary record of the 915th meeting

Topic:
Special missions

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special missions was justified in the present state of international law. If the Commission decided not to refer to the right of asylum in article 19, it should explain in the commentary that the subject had been left aside because it was reserved for later study.

52. With regard to the question of the measures to be taken in case of fire or other disaster, it should be noted that, under the terms of article 20, "The archives and documents of the special mission shall be inviolable at any time and wherever they may be", which meant even in case of disaster. Consequently, if the Commission decided not to include in article 19 the express provision which had been suggested by several Governments, it might at least specify that in case of disaster article 20 would enter into force.

53. Mr. BARTOŠ, Special Rapporteur, said that, at the 1961 Vienna Conference, nobody had raised the question of political asylum in connexion with article 41, paragraph 3 of the Vienna Convention on Diplomatic Relations. During the discussion on that provision, the subject most frequently mentioned had been the practice of certain large States of staging miscellaneous exhibitions, entertainments and displays in their embassies. Delegates had wanted such use of the premises of the diplomatic mission to be regulated by bilateral agreement between the receiving and the sending States. The question of political asylum had been raised independently of article 41.

54. Since opinion was so divided on the question of the right of asylum, he suggested that the Commission draft a provision on the subject and, as it had already done on other occasions, include it in the draft between square brackets so that the conference of plenipotentiaries could either retain it or delete it.

55. The CHAIRMAN said that the discussion had been an illuminating one for academic lawyers, but too much of it had been devoted to the question of asylum. It would be thought very strange if, after two diplomatic conferences had left the subject aside, the Commission were suddenly to decide to include provisions on asylum in a draft of far narrower scope. The topic had been referred to the Commission for special study and it had never been the intention of governments that it be dealt with incidentally as part of another topic.

56. He hoped the Commission would agree on a solution of the kind suggested by the Special Rapporteur and Mr. Eustathiades whereby a passage would be inserted in the commentary, outlining the history of the discussion of that question during the work on diplomatic and consular relations and mentioning that it was to be taken up in future.

57. Mr. JIMÉNEZ de ARÉCHAGA said that if a new passage were added to the commentary, it should be modelled on the text given in the Commission's commentary to its draft articles on diplomatic intercourse and immunities, on which Mr. Padilla Nervo had been very insistent. The Latin American members were not asking for either approval or condemnation of that practice.

58. The CHAIRMAN pointed out that it had been clearly suggested that the commentary should contain an

account of the way the question of asylum had been dealt with in the past.

59. Mr. JIMÉNEZ de ARÉCHAGA said that he could not agree to a statement on the lines of that suggested by Mr. Eustathiades. The present draft articles must allow the *inter se* practice regarding asylum which existed among certain States. Apart from other purposes, the premises of special missions could be used for giving asylum.

60. The CHAIRMAN, summing up the discussion, said that there seemed to be general agreement not to include any special provisions on asylum in the draft articles, but to insert a passage on the matter in the commentary.

61. Members also seemed to be agreed on the need to require the sending State to notify the receiving State what premises were to be used by the special mission, since in the absence of such notification it would be difficult for the receiving State to discharge its obligations.

62. There had been considerable discussion as to whether or not a *force majeure* clause should be inserted in article 19, or whether the problems resulting from such cases should be left to be regulated by other articles. He doubted whether the question was of as much importance for the present draft as it had been for the premises of permanent missions. If there were any real obstruction on the part of the sending State over any of the provisions of article 19, the manifestly temporary character of a special mission and the power of the receiving State to terminate it at short notice would be a potent weapon militating in favour of finding a balance between the interests of the two States. In his own opinion, the phraseology of article 31, paragraph 2, of the Convention on Consular Relations was not particularly helpful, since it failed to indicate whether the presumption that consent was given would prevail over the refusal of consent. Perhaps the matter could be left to the Drafting Committee for consideration in the light of the two Vienna Conventions.

63. He suggested that article 19 be referred to the Drafting Committee.

*It was so agreed.*⁷

64. Mr. TAMMES said he hoped he had not conveyed the impression that he was in favour of a comprehensive article on asylum. His purpose had been to draw the Commission's attention to the relationship between the inviolability of the premises and the abuse of privileges attached to functions, and he had only mentioned asylum as an example.

The meeting rose at 6 p.m.

⁷ For resumption of discussion, see 931st meeting, paras. 2-6.

915th MEETING

Tuesday, 6 June 1967, at 10 a.m.

Chairman: Sir Humphrey WALDOCK

Present: Mr. Ago, Mr. Albónico, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Eustathiades, Mr. Ignacio-

Pinto, Mr. Jiménez de Aréchaga, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Reuter, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

Special Missions

(A/CN.4/193 and Addenda; A/CN.4/194 and Addenda)

(continued)

[Item 1 of the agenda]

ARTICLE 20 (Inviolability of archives and documents) [26]

1. *Article 20* [26]
Inviolability of archives and documents

The archives and documents of the special mission shall be inviolable at any time and wherever they may be.

2. The CHAIRMAN invited the Commission to consider article 20, the Special Rapporteur's proposals for which were contained in paragraph 5 of the section on that article in his fourth report (A/CN.4/194/Add.2) and in his additional comments in document A/CN.4/194/Add.4.

3. Mr. BARTOŠ, Special Rapporteur, said that article 20 reproduced *mutatis mutandis* article 24 of the Vienna Convention on Diplomatic Relations and article 33 of the Vienna Convention on Consular Relations.

4. The Greek Government considered that the application of the provision to technical special missions and special missions of short duration should be restricted, but in his opinion there could be no exceptions to the principle of inviolability of archives and documents.

5. The CHAIRMAN said he noted that there were no comments on article 20, the text of which was based on a provision contained in both Vienna Conventions.

6. He suggested that the article be referred to the Drafting Committee, with the expectation that there would be no change in its text.

*It was so agreed.*¹

ARTICLE 21 (Freedom of movement) [27]

7. *Article 21* [27]
Freedom of movement

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure to all members of the special mission such freedom of movement and travel on its territory as is necessary for the performance of its functions, unless otherwise agreed.

8. The CHAIRMAN invited the Commission to consider article 21, the Special Rapporteur's proposals for which were contained in paragraph 8 of the section dealing with that article in his fourth report (A/CN.4/194/Add.2).

9. Mr. BARTOŠ, Special Rapporteur, said he thought the article did not raise any serious difficulties, although it had given rise to certain objections.

10. In the Sixth Committee of the General Assembly the Turkish representative had opposed the granting of freedom of movement to all members of the special mission throughout the territory of the receiving State and had urged that a special mission should only be granted the freedom of movement necessary for the performance of its task.²

11. The Swedish Government had also proposed a less liberal solution than that adopted in the draft (A/CN.4/188).

12. To restrict freedom of movement to journeys necessary for the task of the special mission was, of course, entirely in accordance with the functional theory. There was no rule of international law against the adoption either of a broader concept—subject to the guarantees necessary for national security—or of a more restrictive one. He himself was inclined to favour the former.

13. Mr. CASTRÉN proposed the deletion of the words “unless otherwise agreed”, at the end of the article. The text contained another reservation, which did not appear in the Vienna Conventions, under the terms of which freedom of movement was only ensured in so far as it was necessary for the performance of the functions of the special mission. It would be wrong to limit that freedom still further, for the special mission would then no longer be able to perform its task. Moreover, if the Commission decided to insert in the draft a general clause on derogations by mutual agreement between the States concerned, the proviso at the end of the article would become unnecessary in any case.

14. Mr. BARTOŠ, Special Rapporteur, explained that the concluding words, “unless otherwise agreed”, also covered certain special situations. It frequently happened that special missions were given permission to travel in forbidden zones, such as military zones, in order to perform their task. Perhaps the text was not sufficiently clear on that point; the Drafting Committee could clarify it as required.

15. Mr. CASTRÉN said that the concluding words, “unless otherwise agreed” appeared in many articles of the draft, and generally amounted to a restriction. But from the example given by the Special Rapporteur, it would appear that they might equally well connote an extension of the rule. The Drafting Committee would therefore have to take that dual aspect of the problem into account.

16. The CHAIRMAN, speaking as a member of the Commission, said that he agreed with the Swedish Government's objection to the phrase “unless otherwise agreed”. That phrase was open to the interpretation that it referred to a possible agreement to grant fewer facilities than were necessary for the performance of the special mission's task. In order to avoid that difficulty, those words should be replaced by some such formula as “in the absence of a specific agreement”.

¹ For resumption of discussion, see 931st meeting, paras. 22-24.

² *Official Records of the General Assembly, Twentieth Session, Sixth Committee, 847th meeting, para. 24.*

17. There remained, however, the more general problem of the relationship between a clause of that type and the proposed general article on the question of specific agreements which departed from the provisions of the draft articles. That problem could only be dealt with by the Drafting Committee.
18. Mr. REUTER said he fully agreed with the Chairman. He proposed that the reservations at the beginning and at the end of the article should both be deleted. Thus simplified, the text would still make it clear that a special mission could enter forbidden zones if the performance of its task so required.
19. Mr. USHAKOV said that the words "for reasons of national security" did not appear in article 26 of the Vienna Convention on Diplomatic Relations and he therefore saw no reason why they should be included in article 21 of the draft. It was for the receiving State to draw up laws and regulations to cover that matter and that State was not required to give the reasons why it had created prohibited zones.
20. He was in favour of maintaining the words "unless otherwise agreed", because it was necessary to provide for cases where the receiving State, with the consent of the sending State, decided to take charge of the special mission's movements.
21. Mr. Reuter's proposal to delete the words "Subject to its laws and regulations concerning zones entry into which is prohibited or regulated" was unacceptable. The inclusion of that proviso, which was also to be found in article 26 of the 1961 Vienna Convention, made it clear that the receiving State, by virtue of its sovereign rights, was at liberty to establish prohibited zones and to issue laws and regulations regarding them.
22. Mr. BARTOŠ pointed out that article 26 of the Vienna Convention on Diplomatic Relations opened with the words "Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State..." Moreover, contrary to what Mr. Ushakov had said, the expression "for reasons of national security" did appear in that article; on the other hand, it did not appear in the Vienna Convention on Consular Relations and the Commission would therefore have to choose between the two.
23. Mr. EUSTATHIADES said that the underlying principle of article 21 was that a special mission should be granted all the freedom of movement necessary for it to carry out its functions. The proviso at the beginning of the article was necessary, because, if the special mission had to enter prohibited zones to perform its task, the question then arose whether, in case of dispute, the needs of the special mission prevailed over those of national security. On the whole, it would perhaps be best to keep the proviso, since it facilitated negotiation and prevented tension from arising between the States concerned.
24. Mr. YASSEEN said that article 21 was well balanced, in that it sought to reconcile differing points of view. The special mission's freedom of movement should be confined to the journeys which it had to make in performing its task. It was not a question of the principle of freedom of movement for an individual, but of the freedom that a special mission must have to carry out its duties.
25. Mr. JIMÉNEZ de ARÉCHAGA said he must point out that the proviso regarding restrictions "for reasons of national security" appeared both in article 26 of the 1961 Vienna Convention on Diplomatic Relations and in article 34 of the 1963 Vienna Convention on Consular Relations. Such restriction was necessary in the case of both permanent missions and consulates because members of such missions and consulates enjoyed freedom of movement throughout the territory of the receiving State. The position, however, was different with regard to a special mission, whose members only enjoyed "such freedom of movement and travel" as was "necessary for the performance of its functions". There was no need for any restriction relating to national security, since the members of a special mission would only enter a restricted zone if such entry formed part of the mission's task, in which case it would naturally be authorized by the receiving State.
26. Mr. RAMANGASOAVINA said it was clear that the freedom of movement of members of a special mission was subject to three restrictions. First, it must not jeopardize the national security of the receiving State; secondly, it was granted only to the extent that it was necessary to enable the special mission to perform its duties; and thirdly, it was subject to any derogations made by mutual agreement. As had already been pointed out, the third condition might result either in a restriction or in an extension of the freedom.
27. He proposed that the article be amended to read "The receiving State shall ensure to all members of the special mission freedom of movement and travel on its territory to the extent that is this necessary for the performance of the task of the special mission and is compatible with the security needs of the State".
28. Mr. NAGENDRA SINGH said he agreed with Mr. Ushakov that there was no necessity to state the reasons for restrictions; they need not be only national security, but could be physical danger or health risks from an epidemic. It would perhaps therefore be more correct to refer to zones entry into which was prohibited or regulated by law that was applicable to all and to give no specific reasons. However, he would hesitate to propose any departure from the language used in article 26 of the 1961 Vienna Convention and article 34 of the 1963 Vienna Convention.
29. The Drafting Committee would no doubt examine carefully both the drafting and the punctuation of the article; in particular, the concluding phrase "unless otherwise agreed" would have to be reworded in order to prevent any misunderstanding.
30. Mr. REUTER said that freedom of movement and travel was accorded to the members of the special mission, not so as to permit them to go on sight-seeing tours but in order to enable them to carry out their task. If the opening words of article 21, "Subject to its laws and regulations... national security", were deleted, it would still be understood that members of special missions were required to comply with the laws and regulations in force on the territory of the receiving State and not to proceed to areas,

access to which was prohibited for various reasons such as epidemics, road dangers and so on. He had no objection to using the wording of article 26 of the Vienna Convention on Diplomatic Relations, but it must be remembered that the provisions of that Convention applied to people who were residing permanently on the territory of the receiving State, whereas members of special missions left the territory of the receiving State once they had completed their task.

31. Mr. BARTOŠ, Special Rapporteur, said that the freedom of movement and travel granted to members of special missions was limited by what was necessary to enable them to perform their duties. In practice, some States placed fairly severe restrictions on that freedom and occasionally themselves decided where the mission should travel and where it should stay. In principle, the freedom of movement of special missions to United Nations Headquarters was subject to certain restrictions, unless they obtained a special permit.

32. At the United Nations Conference on Diplomatic Intercourse and Immunities, the expression "for reasons of national security" had met with some opposition, but the Conference had not wished to specify public health or other reasons in article 26 of the Convention.

33. Mr. Castrén feared that the words "unless otherwise agreed" would impose further restrictions on the freedom of movement of special missions. On the contrary, cases might arise where, by agreement between the receiving State and the sending State, those words would make it possible to enlarge the opportunities granted to members of a special mission to travel in the territory of the receiving State. Mr. Yasseen had rightly said that the article was well-balanced; the last sentence enabled the parties to agree to allow special missions to enter "zones entry into which is prohibited or regulated".

34. He urged the Commission to retain the provisions which appeared in article 21 and to leave it to the Drafting Committee to find a wording that would be clearer and more precise while conforming to the principle laid down in article 26 of the Vienna Convention on Diplomatic Relations.

35. The CHAIRMAN said that, if there were no objection, he would consider that the Commission agreed to refer article 21 to the Drafting Committee as proposed by the Special Rapporteur.

*It was so agreed.*³

ARTICLE 22 (Freedom of communication) [28]

36. *Article 22* [28]
Freedom of communication

1. The receiving State shall permit and protect free communication on the part of the special mission for all official purposes. In communicating with the Government and the other missions and consulates of the sending State, wherever situated, the special mission may employ all appropriate means, including couriers and messages in code or cipher. However, the special mission may install and use a wireless transmitter only with the consent of the receiving State.

2. The official correspondence of the special mission shall be inviolable. Official correspondence means all correspondence relating to the special mission and its functions.

3. The bag of the special mission shall not be opened or detained.

4. The packages constituting the bag of the special mission must bear visible external marks of their character and may contain only documents or articles intended for the official use of the special mission.

5. The courier of the special mission, who shall be provided with an official document indicating his status and the number of packages constituting the bag, shall be protected by the receiving State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

6. The sending State or the special mission may designate couriers *ad hoc* of the special mission. In such cases the provisions of paragraph 5 of this article shall also apply, except that the immunities therein mentioned shall cease to apply when the courier *ad hoc* has delivered to the consignee the special mission's bag in his charge.

7. The bag of the special mission may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a courier of the special mission. By arrangement with the appropriate authorities, the special mission may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

37. The CHAIRMAN invited the Commission to consider article 22, the Special Rapporteur's proposals for which were contained in paragraph 18 of the section on that article in his fourth report (A/CN.4/194/Add.2) and in his additional comments in documents A/CN.4/194/Add.4 and Add.5.

38. Mr. BARTOŠ, Special Rapporteur, said that article 22, which was of a technical character, had been the subject of a good deal of comment by Governments, which had made several suggestions.

39. The Netherlands Government's comment was that, although special missions should enjoy freedom of communication in the conditions described in article 22, some restriction could be placed on the exercise of that freedom by mutual agreement between the States concerned, and it had proposed that an introductory paragraph be added to that effect.

40. The United Kingdom Government did not consider that a special mission had the right to have a diplomatic bag of its own if the sending State had accredited a permanent diplomatic mission to the receiving State, and it had asked that it should be made clear that the word "free" in paragraph 1 had the sense of "unrestricted". His view was that special missions were often called upon to carry out their tasks in places where the sending State did not have a permanent diplomatic mission and that they should therefore be able to use their own bag in order to communicate with their government in the best possible conditions.

41. The Yugoslav Government took the view that couriers *ad hoc* had not completed their task until they had returned to their point of departure and so maintained that they should enjoy immunity for their return journey instead of losing it as soon as they had delivered the bag

³ For resumption of discussion, see 931st meeting, paras. 25-27.

in their charge to the consignee, as provided for in paragraph 6. The Yugoslav Government's argument was obviously logical, but if the Commission adopted it, then couriers *ad hoc* of special missions would enjoy wider immunities than were granted by the Vienna Convention to *ad hoc* diplomatic couriers.

42. The Belgian Government had raised the problem of the inadequacy of the protection provided for the telegraphic communications of special missions and had asked that such missions should be authorized to transmit government telegrams in the conditions provided for in annex 3 of the 1959 International Telecommunication Convention. He had put that problem before the Commission,⁴ which had considered that it was a minor problem, since under the terms of article 22, paragraph 1, special missions could send messages in code or cipher to the sending State, and since the future convention on special missions would enter into force after the International Telecommunication Convention and accordingly its provisions would override those of the latter.

43. The Belgian Government had also made suggestions concerning the use of wireless transmitters, but he thought that special missions should comply with the regulations and obtain the consent of the receiving State. In a work of codification, the Commission ought not to concern itself with those questions, which should be dealt with in the annexes to technical conventions.

44. The Gabonese Government had taken up an argument which had been put forward on several occasions by Mr. Tsuruoka, and urged that special missions, except in special cases, should transmit their official documents to the sending State by the bag of the permanent diplomatic mission of that State.

45. The Greek Government had asked whether it would not be possible to restrict privileges and immunities, especially for technical and short-term missions, but that was a question of a general nature and the Greek Government had not submitted any concrete proposal.

46. Mr. REUTER said that the expression "free communication on the part of the special mission for all official purposes" in paragraph 1 was incorrect; he was fully aware that the expression was to be found in article 27 of the Vienna Convention on Diplomatic Relations, but hoped that the provisions of the draft articles on special missions would be more carefully drafted.

47. Mr. CASTRÉN said that the article followed almost word for word the text of the corresponding articles of the Vienna Conventions, more particularly that of the Vienna Convention on Diplomatic Relations. That assimilation was justified and it was therefore unnecessary to amend the present text.

48. The Belgian Government's second suggestion for an addition to the provision in paragraph 1 concerning wireless transmitters could be accepted, subject to drafting amendments.

49. The new paragraph which the Netherlands Government proposed should be inserted in order to emphasize the residual character of the provision would sound rather too peremptory. It was not a question of depriving special missions of freedom of communication, but of imposing, where necessary, certain restrictions on that freedom. For that reason, it would seem appropriate to add a new provision at the end of the article reading more or less: "The freedom of communication of the special mission shall be subject to limitations by mutual agreement between the States concerned". Should the Commission adopt a general clause on the right of derogation, that new provision would, of course, become superfluous.

50. Lastly, he wished to point out that paragraphs (1) and (2) of the commentary referred only to the Vienna Convention on Diplomatic Relations, whereas article 22, paragraph 7, was based on article 35 of the Vienna Convention on Consular Relations.

51. Mr. EUSTATHIADES said that the provisions of article 22 went too far in assimilating special missions to permanent diplomatic missions and that he could understand the perplexity of certain Governments. Mr. Castren's proposal offered a solution which he personally was prepared to accept.

52. With regard to the written comments by the United Kingdom Government about the special mission's right to a diplomatic bag of its own, he questioned whether it was advisable to recognize such a right in the case of a special mission of secondary importance which carried out its activities in a place where there was a permanent diplomatic mission accredited by the sending State. In his opinion, the Commission should seek a solution half-way between the formula of article 22, paragraph 1, and that advocated by the United Kingdom Government; the use of the bag by the special mission, might, for example, be the subject of a special agreement between the sending State and the receiving State.

53. Mr. USHAKOV pointed out that the term "courier" was used in paragraphs 1, 5 and 7 and the term "courier *ad hoc*" in paragraph 6, whereas it was couriers *ad hoc* that were meant throughout.

54. Since the Drafting Committee intended to devote a special article to the host State, the words "host State" should be inserted in article 22 after words "the receiving State".

55. Mr. BARTOŠ, Special Rapporteur, said that, like Mr. Eustathiades, he considered that the right to use the bag should not be recognized in the case of special missions which were located in the same place as the permanent diplomatic mission or consular post; in such cases the special mission should use the bag and courier of the permanent mission.

56. It should be noted that apart from regular diplomatic couriers, there were couriers *ad hoc* appointed by the sending State, as well as special couriers who might be the captain of a ship or of a commercial aircraft. Ministries of Foreign Affairs had reduced the number of regular couriers and made more use of special couriers, because they could thereby communicate more quickly and easily

⁴ For previous discussion of article 22, see *Yearbook of the International Law Commission, 1965*, vol. I, 805th meeting, paras. 77-90, 806th meeting, paras. 1-37, and 817th meeting, paras. 15 and 16.

with their permanent diplomatic missions or special missions.

57. With respect to the provisions concerning the host State, he was putting the final touches to his proposals, which he would communicate in writing to the Secretariat so that the Commission could consider them before referring them to the Drafting Committee.

58. Subject to an amendment along the lines indicated by Mr. Eustathiades, he thought that the Commission could refer article 22 to the Drafting Committee, which, in the light of Mr. Reuter's comments, would improve its style before returning it to the Commission.

59. The CHAIRMAN said that if there was no objection, he would consider that the Commission agreed to adopt the Special Rapporteur's proposal to refer article 22 to the Drafting Committee for consideration in the light of the discussion; in particular, the Drafting Committee would consider Mr. Eustathiades' suggestion for taking into account the comments of the United Kingdom and some other Governments.

*It was so agreed.*⁵

ARTICLE 23 (Exemption of the mission from taxation) [24]

60. *Article 23* [24]
Exemption of the mission from taxation

1. The sending State and the head of the special mission and the members of its staff shall be exempt from all national, regional or municipal dues and taxes in respect of the premises of the special mission, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in this article shall not apply to such dues and taxes payable under the law of the receiving State by persons contracting with the sending State or the head of the special mission.

61. The CHAIRMAN invited the Commission to consider article 23, the Special Rapporteur's proposals for which were contained in paragraphs 10 to 14 of the section dealing with that article in his fourth report (A/CN.4/194/Add.2) and in his additional comments in document A/CN.4/194/Add.4.

62. Mr. BARTOŠ, Special Rapporteur, said that the article reproduced *mutatis mutandis* article 23 of the Vienna Convention on diplomatic relations. The Commission had omitted the words "whether owned or leased" which appeared in the Vienna Convention, because it considered that they were not really applicable to the case of special missions.

63. The Belgian Government had proposed that in paragraph 1 the words "in his capacity as such" be added after the words "the head of the special mission". He had no objection to that addition.

64. The United Kingdom Government had proposed that in paragraph 1 the words "including taxes on capital gains arising on disposal" should be added after the words "premises of the special mission". He agreed with the idea underlying that proposal, but pointed out that it was diffi-

cult to mention one tax in particular without mentioning the others, of which there was a great variety. It would be better to retain the general expression used in article 23 of the Vienna Convention.

65. The first comment by the Netherlands Government was based on an error in the translation of the article into English: in the French original there was no mention of the members of the staff of the special mission.

66. In its second comment, the Netherlands Government proposed the deletion of the article. He advised the Commission to retain the article, since temporary missions could last long enough for the question of taxation of the premises to arise. That was why the Commission had decided at the first reading to provide that special missions should have the same treatment as diplomatic missions in that respect. The rule stated in the article would save States a good deal of uncertainty and unnecessary formalities.

67. The mention of article 23 by the Government of Israel in its comments on terminology must, he thought, be due to an error. The comment by the Greek Government raised the general question of the extent of the privileges and immunities to be granted to special missions.

68. Mr. ALBÓNICO said that he was in favour of dropping article 23, as had been proposed by the Netherlands and Greek Governments. Since special missions were temporary in character and had a limited task, it was quite unnecessary to grant them exemption from taxation. If the article were retained, the Belgian amendment for the insertion of the words "in his capacity as such" should be adopted and the exemption limited to the head of mission; that change would bring the article into line with article 23 of the Vienna Convention on Diplomatic Relations.

69. Paragraph 2, which referred to private persons who had entered into a contract with the sending State, was completely out of place. Tax laws were invariably construed restrictively and any exemption that might be granted was extended only to the person or persons specifically designated in the law.

70. Mr. AGO said that, in his opinion, the exemption provided for in article 23 was necessary. Special missions could last for quite a long time and in any case they would need premises, even if they generally leased them. The article was therefore indispensable in order to avoid many difficulties.

71. To enable the scope of the clause to be clearly understood, it was necessary to bring out the fact that the taxes referred to were not taxes payable by members of the special mission as persons but taxes on the premises for which the special mission itself was liable. The reason why the Commission had mentioned the head of the special mission—as had already been done in the Vienna Convention—in paragraph 1 was to provide for the special case in which the law of the receiving State did not permit the special mission to lease the premises itself, with the consequence that the head or one of the members of the mission had to lease them in his own name. The addition of the words "in his capacity as such", proposed by the Belgian Government, would be pointless, since, as the article mentioned the premises of the special mission, it

⁵ For resumption of discussion, see 931st meeting, paras. 28-40.

was obvious that it could not refer to acts performed in a private capacity.

72. The Commission should retain the article as it stood, except for a slight change, namely, that paragraph 1 should mention not only the head but also the members of the special mission, in case the mission had no head.

73. Mr. NAGENDRA SINGH said that article 23 should be retained, as it would be a useful provision. The reference to members of the staff could be dropped, however, because they were not included in article 23 of the Vienna Convention on Diplomatic Relations. As special missions rarely needed premises of their own there would be little justification for extending the immunity by adding to the wording of the 1961 Vienna Convention. The Belgian Government's proposal, supported by the Special Rapporteur, to insert the words "in his capacity as such" after the words "head of the special mission", should be considered by the Drafting Committee.

74. There was no need for the United Kingdom proposal to add the words "including taxes on capital gains arising on disposal"; that might be relevant to diplomatic or consular missions but not to special missions.

75. The CHAIRMAN said that the reference to the members of the staff, in the English version of paragraph 1, was obviously due to a mistake.

76. Mr. KEARNEY said that he had no objection to article 23, but its application in practice might cause difficulties, particularly in outlying districts, if the exemptions were not from taxes on property but from use or sale taxes.

77. Mr. USTOR said that the title of article 32 in the Convention on Consular Relations, with appropriate changes, should be adopted for article 23, which dealt with the exemption of the premises from taxation. The wording of paragraph 1 should also follow the wording of that article and should make no reference either to the head or to the members of the mission.

78. Under the fiscal system of most countries it was the owner and not the lessee who had to pay taxes on premises. Paragraph 2 would therefore weigh more heavily on poorer States that were not in a position to buy premises, since the taxes would be passed on to them in the rent, whereas richer States which bought premises would enjoy immunity. He was therefore not very satisfied with that paragraph.

79. Mr. ALBÓNICO said that there was a defect in the drafting of article 23, which was also to be found in the corresponding article of the Vienna Convention on Diplomatic Relations, in that it referred to the premises "of the special mission", whereas in fact it was the sending State and not the special mission which was either the owner or the lessee of the premises. Premises owned by the sending State would more usually be premises used by the permanent mission, part of which would be allocated to the special mission, and such premises would enjoy the same exemptions as were provided for in the Convention on Diplomatic Relations.

80. He could not agree with Mr. Ago that article 23 only referred to taxes on property. Taxes on rented premises were personal taxes payable by the tenant, and the Belgian

Government's amendment had some meaning in that context. Its purpose was to make it clear that, if the premises were for the personal use of the head of the mission, then they would be liable to taxation.

81. Mr. BARTOŠ, Special Rapporteur, said that article 23 of the Vienna Convention on Diplomatic Relations and article 32 of the Vienna Convention on Consular Relations were based on two very different ideas. The former provided the normal solution, accepted by everyone, of exemption from taxation of the owners or tenants of the premises, not exemption of the premises themselves. The converse solution was, to his thinking, entirely wrong. At the first reading, the Commission had chosen to adopt the solution of the Convention on Diplomatic Relations. However, he would not be opposed to the Drafting Committee's changing the title of article 23 to make it clear, in order to satisfy Mr. Ustor, that the tax exemptions in question related to the premises of the special mission.

82. In reply to Mr. Kearney, he said that the first Vienna Conference had discussed and rejected a proposal to generalize United States practice concerning the reimbursement of consumption taxes. He would not recommend the Commission to adopt a formula of that kind for special missions.

83. The inclusion of paragraph 2 was justified. A similar provision appeared in the two Vienna Conventions. Its purpose was to prevent certain abuses and limit the exemption to taxes paid by those who were normally required to pay them under the law of the receiving State. The receiving State ought not to gain any tax revenue by reason of the fact that a special mission was present in its territory and using premises there, but the owner of premises ought not to be exempted from taxation merely because he leased those premises to a special mission. As to the question whether the owner would raise the rent so as to recover the tax from his tenant, that was another matter, and one with which the Commission was not concerned.

84. He did not propose any change in article 23. The Drafting Committee could examine the various points of detail that had been raised, such as the addition of the words "in his capacity as such", and might possibly delete the reference to the head of the special mission if it thought, like Mr. Ustor, that only the sending State was concerned.

85. The CHAIRMAN suggested that article 23 be referred to the Drafting Committee. The wording seemed to have found favour with most members.

86. Speaking as a member of the Commission, he hoped that the Belgian amendment for the inclusion of the words "in his capacity as such" would not be incorporated because that would mean having to examine all the other articles to see whether the same addition was necessary. They must rely on the articles being interpreted in good faith, references to the head of the mission being taken as meaning the person who was acting in that capacity.

*Article 23 was referred to the Drafting Committee.*⁶

The meeting rose at 12.55 p.m.

⁶ For resumption of discussion, see 931st meeting, paras. 41-55.